

East Longmeadow Conservation Commission

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Craig Jernstrom, chair

Thomas O'Brien, clerk

René Reich-Graefe

Michael Carabetta

William Arment

Robert Sheets

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Special Meeting

Minutes of February 18, 2015

Present were: Chair, Craig Jernstrom; René Reich-Graefe, William Arment, Robert Sheets and Michael Carabetta. Thomas O'Brien was not present.

Continuation of Public Hearing – T & K Realty (Con-Test Analytical Laboratory), 40 Spruce Street

Chair, Craig Jernstrom continued the public hearing for T & K Realty and said that the Commission continued the hearing because they had a few questions pertaining to the delineation. He said that the areal photography from the state showed the wetlands boundary approximately 300 feet away from where it was shown on the plans. Mr. Jernstrom said that he and Ms. Comee spent some time out at the site and identified some of the plants. He said that there were blown down trees that were beneficial to him because they were actually in the area on the Massachusetts Map that were in the wetland. Mr. Jernstrom said when they looked at the soil from the downed trees it was sandy soil which was no an indicator of the hydrology which would be required for it to be in the wetland. He said that he is very satisfied with the delineation that has been done and addressed the representative to further explain was has taken place since the last meeting.

Representative Heather Comee said that they walked the entire line and they could see the soils from the blown downed trees were clear upland soils and they were also able to identify a lot of the vegetation. She said that even though there was a lot of snow on the ground they were still able to see the delineation and said she would be happy to answer any questions the Commission might have.

Mr. Jernstrom addressed the Commission for any questions.

Mr. Arment said that the only other question he still had was the rain water runoff issue in that they weren't going to create too much rain water runoff both going into the wetlands and towards the AW Brown property.

Gary Weiner, Engineer said one of things in the stormwater management requirements and reviews is to look at primarily ways to minimize the amount of impervious surface and ways to reintroduce surface water back into ground water so that the impervious surfaces are not all running off to the wetland area. Mr. Weiner said the siting of the buildings is such that they are away from wetland and part of that was due to the needs of Con-Test across the street because it is going to be laboratory

building for and also their chemical storage area which is now outdoors next to the sheds in the back parking lot. He said that it will all now be contained in a building and the building will be kept to the front of the parcel and said that they also looked at trying to minimize parking because of the economic impact and the environmental impact putting down pavement for parking spaces. Mr. Weiner said many times they run into the problem of zoning regulations versus environmental desires and because of the square footage and the uses of the building they are required to provide 32 parking spaces which is about twice as many parking spaces as they need for the use of the laboratory building and the storage building. He said under the zoning by-laws they do not have the ability to reduce the amount of spaces based on what they see is the need and in the past there have been proposals to the Planning Board instead of paving all the parking lot if they only needed eight spaces pave ten, leave the rest and do the subgrade get it all set if they actually need to pave over it. Mr. Weiner said under the zoning regulations they don't have that flexibility to do that and in looking at green potential for the 2.4 acre lot they kept the buildings to the front and also instead of using hardscape because from Prospect Street down to the site there is the hill and there is a very large amount of runoff and sheet flows behind AW Brown and goes into the wetland and subsequently to the Shaker Road and into the parking lot on some occasions of AW Brown. He said that they introduced grass swales so that the water is slowed down minimally but has sometime to percolate and they also pushed some water towards Spruce Street and into the drainage system that ends into Spruce Street. He said part of the green idea is to provide a detention basin and also an infiltration trench, no infrastructure and all of the runoff from the site goes across green space areas to paved areas, there are no catch basins to grab it and increase the rate of runoff going across the green space areas to paved areas and there are no catch basins to grab it and increase the amount of runoff. Mr. Weiner said that there is outlet that discharges to the wetland to the south and then to the west and that they are actually reducing the peak flows that are coming off that site. He said they are not adding more water due to the roof lines or the impervious surfaces, they are slowing it down and the site has been raised slightly. Mr. Weiner said that there is a ground water issue on the site and when they did the test pits the deeper they went it was a red till which is very tight, very greasy and does not take infiltration water very well. He said under stormwater management guidelines they are allowed because it is classified as C soil because it is so poorly drained and they don't have to have the 100% requirement because the soils are so poor. Mr. Weiner said by raising the grade they lifted up the basin enough so they actually comply with the stormwater standard and they have tried to minimize the amount of runoff coming off the site and provide infiltration back into the ground water which will be very small and very slow. He said the west side of Spruce Street has raised some concern and Mr. Wheeler has granted an easement for sloping and by picking the site up initially they had a short block wall on the submitted plans to provide the transiting grade. Mr. Weiner said instead of removing the wall the easement allows them to gently slope down in that 10 foot area just a grass slope area. He said there is about an 18" culvert that takes water under Shaker Road and under the property of Prospect Builders to the Bike Trail that is partially plugged and it needs to be cleaned. Mr. Weiner said he thinks originally it passed under the rail line and then moved north into a wetland behind American Saw and found its way but now has been long cutoff. He said with the culvert partially blocked and with the ninety foot turn that has to happen there are backups in that wetland and thinks that the town should probably be looking at cleaning that culvert because it is a town culvert. Mr. Weiner said maybe as part of that cleaning the channel leading into that culvert could be moved back about 25 feet but understands that it's in a wetland and it might be a difficult permit. He said but that would be to minimize the amount of flooding that is taking place currently in that narrow neck of wetland and cleaning that culvert and also extending the channel slightly would go a long way to make sure the water is moving. Mr. Weiner addressed the Commission for any questions that the Commission might have.

Mr. Jernstorm said they are putting in a grassy swale in the northeast corner to get some runoff towards Spruce and asked if they should be concerned with runoff during the construction phase out on Spruce Street and said maybe they should put a silt fence there. Mr. Weiner said if the Commissions want to put that in the Order of Conditions they wouldn't have a problem with that.

Mr. Carabetta asked when they plan on starting the project and how long will it take. Mr. Weiner said that the building has been ordered but there are delays with that and said that they would probably break ground at the end of March and they would like to be in there sometime in October.

Mr. Jernstorm addressed the audience for any questions.

Attorney James Martin thanked the Commission and Ms. Comee for going out and walking the site with all the snow on the ground. He said that they have actually granted a license to Mr. Veratti not an easement so he can do what he wants on that land. Attorney Martin said that the entrance to AW Brown is where it floods and when people try and enter the site and see the flooding they turn around and don't go there. He said that Mr. Veratti was wondering if the Commission could require plantings that might absorb the water during the regular period as opposed to 100 year storms in that corner of the parking lot to that area to absorb moisture on an annual basis. Attorney Martin also asked who would be responsible for cleaning of the culvert and said the last time he was before the Planning Board it ended up being his client having to do some of the work.

Mr. Carabetta asked Attorney Martin where the pipe is in relationship to his client's property. Attorney Martin said that it is to the right of entrance down the bank. He asked who would be responsible for the trenching and asked how the cleaning of the culvert is done. Mr. Carabetta asked who owns the property where the trenching will be done. Attorney Martin said that Mr. Wheeler doesn't own it.

Ms. Comee asked if the culvert is on town property. Mr. Weiner said that it's in right of way of the town.

Mr. Carabetta asked if there is any sort of drainage easement drawn up at any point or time. Attorney Martin said the only thing on record currently is the license they gave to Mr. Veratti's to enter in and use that slope to support the development but other than that Mr. Wheeler hasn't granted anyone an easement. Mr. Weiner said if it is similar to the Kids Place on Shaker Road behind to the left of it there is a culvert under the road and goes into the pond and the town had a culvert but did not have an easement for the runoff that actually moves around Kids Place and takes a lot of the runoff from Prospect Street and comes down. He said that there was no easement so Kids Place granted to the town the right to channelize and cleanup because the town did not have one at the time.

Attorney Martin said that they would be willing to work with Mr. Weiner and the Veratti's to find out how to obtain an easement to get that done. He said that the town's boundary is essentially at the gate entrance of AW Brown's and said that those are their concerns not only the AW Brown property but for the town.

Mr. Jernstorm said the timing is interesting because he just spoke with a representative from the DPW last week about something they approached the Commission with about a year ago. He said that is sort got pushed off to the side but it is a good example for the need of a Bundled Notice of Intent for the Department of Public Works.

He said when the DPW did the paving project on Elm Street the Commission had to issue an Emergency Order to repair the culvert that crossed Elm Street about a mile down the road. Mr. Jernstrom said that he did make a notation about it and will speak to the DPW about it and it will probably be something they can research and find out who owns that property and maybe have that incorporated into an annual Bundled Notice of Intent.

Attorney Martin said that he will be happy get that information on who owns the property to Ms. Rau within the next couple of days and asked if the Bundled Notice of Intent would be for an easement for drainage and cleaning. Mr. Jernstrom said that he is assuming it could be an amendment to the Bundled Notice and include some specifics for that particular task. Mr. Weiner asked if they have filed anything yet. Mr. Jernstrom said no they haven't. Mr. Weiner said that they have seen it before under the Wetlands Protection Act maintenance of structures within right-of-ways is given some leeway even without an emergency situation in terms of bundling. He said if they were to put in language that culverts within right-of-ways would be covered as long as they notified the Commission when and if they were going to clean a particular one so that the Commission would have whatever amount of notice to go and make sure they are not clear cutting the wetland back. Mr. Jernstrom asked Mr. Weiner if he made a visual inspection to determine the culvert was clogged. Mr. Weiner said yes it was a visual inspection and said when you look at the pipe you see at least a third of it is sitting in silt and said that they did the work for Prospect Builders across the street and they cleaned it out a little bit at the culvert end but it really needed a good cleaning.

Mr. Reich-Graefe said they probably have more silt accumulation and the slower the water moves means if it backs up on the other side it could be an issue as well. Mr. Weiner said every drainage is a system, the culvert discharges into a channel which probably needs to be cleaned but then goes towards the wetland area. He said normally engineers would start at the low end and work the way back cleaning as they go making sure everything is functional. Mr. Weiner said that he thinks that Mr. Peirent and the Town Engineer would do that.

Tom Wheeler owner of AW Brown asked Mr. Weiner what recourse he has as a property owner if additional water is determined going his way with the culvert cleaned or not cleaned down the road. Mr. Weiner said if his design doesn't function the way he says it would Mr. Wheeler would have to go back to Mr. Veratti who then goes to the person who designed it to resolve the issue. He said even when an Order of Conditions has been issued it is still private property and third parties don't get involved such as the Town Superintendent and the Town Engineer.

Attorney Martin said maybe in the Order of Conditions there could be some kind of provision that says due to no extraordinary conditions outside the development of the parcel if the overflow exceeds its present level and goes onto the AW Brown property, AW Brown can contact the DPW as to make a determination then the landowner will be responsible for litigating it.

Mr. Jernstrom said his time on the Commission to the best to his knowledge they have never had anything like that in Order of Conditions and he will look into it. He asked Mr. Carabetta if he has ever run into a similar situation with the Planning Board. Mr. Carabetta said that people do come back to the Board and typically they go back to the developer and have them try to work it out on a personal level.

He said typically the town can't get involved because it is a liability for the town and for the Commission to write something in the Order of Conditions might not be in their prevue and they would have to ask town counsel.

Mr. Weiner said that he is a little uncomfortable with the idea of it being included in the Order of Conditions because it would be burdening the town. He said that it has always been private to private and the town generally doesn't get into it. Attorney Martin said that he thinks the simple way to address that is that the Order of Conditions should say that proposed plan has submitted and approved will not increase the runoff onto the neighboring property. He said if it does then the neighbors then have recourse to go back and ask for a review. Mr. Weiner said that he can't speak for Mr. Veratti and he doesn't have a problem with that but by the nature of what he has designed and by the stormwater standards that is in essence what is said in the documentation given to the Planning Board. He said putting it in writing in a Order and saying that the project will not increase peak flows off of the site would recommend to Mr. Veratti that would be alright and he doesn't have a problem with that because that is what he has been tasked to do under the stormwater standards.

Mr. Jernstrom said that there could other migrating circumstances such as somebody did clear cutting and then somebody else put in a swimming pool and then something else happened relatively near by. Attorney Martin said that was why he phrased the way he did and said that its the calculations and they can't hold him responsible for all the extraneous factors. Mr. Weiner said as you already have in the record Mr. Wheeler has a problem now so if the town does not clean that culvert and it gets worse his problem is not going to be getting any better.

Mr. Sheets asked if the Commission has the authority to have the town clean it up. Mr. Wiener said unfortunately no the DPW controls the culvert. Mr. Jernstrom said the Commission can only suggest they investigate it.

Mr. Wheeler said that he appreciates the ideas because he wasn't aware that he could do some of the process. He said he though was maybe there would be an opportunity to leave the door open to say if something changes or impacts him differently there is some avenue to go back and re-evaluate the issue.

Ms. Comee said that there is always an avenue for mediating whether something is written in the Order of Conditions or not, there always an avenue.

Mr. Jernstrom addressed the audience for any further questions or comments, there being none and upon motion duly made by Rene Reich-Graefe and seconded by Robert Sheets, the Commission voted unanimously (5-0) to close the public hearing. Upon motion duly made by Rene Reich-Graefe and seconded by William Arment, the Commission voted unanimously (5-0) to approve the project conditioned on the installation of a silt fence, the potential researching of other special conditions, special conditioned reviewed with town counsel and other parties in town.

Miscellaneous

Mr. Jernstrom said that there is still a vacancy on the Commission and has been working with the Board of Selectmen on getting it posted on ELCAT and asked the Commissioners if the know of anyone that might be interest tell them to contact Craig or contact the Board of Selectmen.

Mr. Jernstrom said the Vice Chair position is still open and would like to fill that. Upon duly made by Rene Reich-Graefe and seconded by Robert Sheets, the Commission voted to elect Michael Carabetta as Vice Chair.

Mr. Jernstrom informed the Commission that Mr. Reich-Graefe will be leaving in about a month for 4 months.

Annual Report

Mr. Jernstorm said that he has submitted the Conservation Annual Report and a provided a copy for each Commissioner.

Regulations for OPDMD

He said that he included in the report that he would like the Commission to establish regulations for OPDMD (other power driven mobility devices) on conservation land. Mr. Jernstrom said that it pertains to ADA (American Disabilities Act) and said currently right now in town if someone has a handicap placard or has a disability technically they can be driving a quad on conservation land. Mr. Carabetta said the last he knew and what has been explained to him is that the ADA was exempt from every regulation as far as conversation is concerned. Mr. Jernstrom said for example the Brown Property Community Gardens or any other conservation land like that a handicapped person the why it is right now can ride a quad in there. He said that it was something that was brought up in past he failed to put back on to be discussed. Mr. Jernstrom asked the Commissioners if they could review the draft regulations that were given to them and it could be placed back on the agenda and remain on the agenda as old business until they approved it. He said that it does not need the Board Selectmen's approval to adopt for conservation land but it is something they should consider adopting also because he believes the same conditions exists for the rail trail that technically a handicapped person could be riding a quad there. Mr. Jernstrom said to the commissioners to please review the draft regulations so that they can finally get them approved.

On going training for Conservation Commissioners

Mr. Jernstrom said he would like to come up with some kind of on going training because in his opinion if you really look at the what the Conservation Commission does compared to the other Board's in town for the most part the Board of Selectmen and the DPW a lot of their decisions are common sense. He knows that the Planning Board has zoning regulations to deal with but what the Commission is charged with is enforcing the Federal Wetlands Protection Act is pretty complicated. Mr. Jernstrom said that he has been taking the UMASS Wetlands Classification & Delineation Webinar Course and said that it is amazing and he is learning a lot. He would also like Mark Stinson from DEP to come out again and do some training with the Commission.

Monitoring of existing projects

Mr. Jernstrom said that he would like the Commission to a better job monitoring the existing projects that are out there and said that he feels it something that needs to be remain a priority. He said those are the three goals that he would like the Commission to address and take care of for the year.

MACC Annual Conference

Mr. Jernstrom said that the MACC Annual Conference will be coming up soon and said that he attended one 2 years ago and said that was the first place where he actually learned about the OPDMD Regulations. He said it was a one conference and pretty informed and feels that it is a good conference to attend.

There being no further business and upon motion duly made by René Reich-Graefe and seconded Michael Carabetta, the Commission voted to adjourn at 8:15 p.m.

For the Commission,

Craig Jernstorm, Chair